

Mail Stop Interference
P.O. Box 1450
Alexandria Va 22313-1450
Tel: 571-272-9797
Fax: 571-273-0042

Paper 1
Filed: December 1, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

EYAL RAZ
Junior Party
(U.S. Application 10/229,208),

v.

ARTHUR M. KRIEG AND JOEL N. KLINE
Senior Party
(U.S. Application 09/337,584).

Patent Interference No. 105,674 (MPT)
(Technology Center 1600)

DECLARATION - Bd.R. 203(b)¹

1
2
3
4
5
6

Part A. Declaration of interference

An interference is declared (35 U.S.C. § 135(a)) between the above-identified parties. Details of the application(s), patent (if any), reissue application (if any), count(s) and claims designated as corresponding or as

¹ "Bd.R. x" may be used as shorthand for "37 C.F.R. ' 41.x". 69 Fed. Reg. 49960, 49961 (12 Aug. 2004).

1 not corresponding to the count(s) appear in Parts E and F of this

2 DECLARATION.

3 Part B. Judge managing the interference

4 Administrative Patent Judge Michael P. Tierney has been designated
5 to manage the interference. Bd. R. 104(a).

6 Part C. Standing order

7 A Trial Section STANDING ORDER [SO] (Paper 2) accompanies
8 this DECLARATION. The STANDING ORDER applies to this
9 interference.

10 Part D. Initial conference call

11 A telephone conference call to discuss the interference is set for
12 2:00 p.m. on December 17, 2008 (the Board will initiate the call).

13 No later than four business days prior to the conference call, each
14 party shall file and serve (SO ¶¶ 10.1 & 105) a list of the motions
15 (Bd. R. 120; Bd. R. 204; SO ¶¶ 104.2.1, 120 & 204) the party intends to file.

16 A sample schedule for taking action during the motion phase appears
17 as Form 2 in the STANDING ORDER. Counsel are encouraged to discuss
18 the schedule prior to the conference call and to agree on dates for taking
19 action. A typical motion period lasts approximately eight (8) months.
20 Counsel should be prepared to justify any request for a shorter or longer
21 period.

1 SO ¶ 154.2.1. The senior party is responsible for initiating settlement
2 discussions. SO ¶ 126.1.

3 Part F. Count and claims of the parties

4 Count 1

5 A method of treating asthma according to claim 58 of
6 U.S. Application 10,229,208 or claim 44 of U.S. Application 09/337,584.

7
8 The claims of the parties are:

9 Krieg, U.S. Application 09/337,584: 42-47, 49-53, 56-57, 82-85, 90,
10 92, 94, 96, 98, 100, 102-103

11 Raz, U.S. Application 10/229,208: 58

12
13 The claims of the parties which correspond to Count 1 are:

14 Krieg, U.S. Application 09/337,584: 42-45, 47, 49-53, 57, 90, 92,
15 94, 96, 98, 100, 102-103

16 Raz, U.S. Application 10/229,208: 58

17
18 The claims of the parties which do not correspond to Count 1, and
19 therefore are not involved in the interference, are:

20 Krieg, U.S. Application 09/337,584: 46,56,82-85

21 Raz, U.S. Application 10/229,208: None

22
23 The parties are accorded the following benefit for Count 1:

24

25

1 Krieg is accorded benefit of the filing dates of the following
2 applications:

- 3 i) U.S. Application 08/960,774, filed
4 October 30, 1997, now U.S. Patent 6,239,116,
5 issued May 29, 2001.
6 ii) U.S. Application 08/738,652, filed
7 October 30, 1996, now U.S. Patent 6,207,646,
8 issued March 27, 2001.

9

10 Raz is accorded benefit of the filing date of the following
11 applications:

- 12 i) U.S. Application 09/235,742, filed
13 January 21, 1999, now U.S. Patent 6,498,148,
14 issued December 24, 2002;
15 ii) U.S. Application 08/927,120, filed
16 September 5, 1997.

17

18

19

20

21

22

23

24

25

26

27

1 Part G. Heading to be used on papers

2 The following heading must be used on all papers filed in this
3 interference, see SO ¶ 106.1.1:
4

5 UNITED STATES PATENT AND TRADEMARK OFFICE
6

7
8
9 BEFORE THE BOARD OF PATENT APPEALS
10 AND INTERFERENCES
11

12
13
14 EYAL RAZ
15 Junior Party
16 (U.S. Application 10/229,208),
17

18 v.
19

20 ARTHUR M. KRIEG AND JOEL N. KLINE
21 Senior Party
22 (U.S. Application 09/337,584).
23

24
25 Patent Interference No. 105,674 (MPT)
26 (Technology Center 1600)
27

28
29 Part H. Order form for requesting file copies

30 When requesting copies of files, use of SO Form 4 will greatly
31 expedite processing of the request. Please attach a copy of Parts E and F of
32 this DECLARATION with a hand-drawn circle around the patents and
33 applications for which a copy of a file wrapper is requested.
34

35 /Michael P. Tierney/
36 Administrative Patent Judge
37

1 cc (via electronic mail):

2

3 Attorney for RAZ:

4

5 BOZICEVIC, FIELD & FRANCIS LLP

6 1900 University Avenue

7 Suite 200

8 East Palo Alto, CA 94303

9

10 Attorney for KRIEG:

11

12 Helen C. Lockhart

13 WOLF GREENFIELD & SACKS PC

14 600 Atlantic Avenue

15 Boston, MA 02210